

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 184 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME TAX

Versus

OLYMPIC BEARING P LTD.

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Appearance:

MR MANISH R BHATT for Petitioner  
SERVED BY RPAD for Respondent No. 1

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CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE KUNDAN SINGH

Date of decision: 03/02/98

ORAL JUDGEMENT

Per : R.K. Abichandani, J.

1. The Income-tax Appellate Tribunal, Ahmedabad has referred the following question for the opinion of this Court under section 256(1) of the Income-tax Act, 1961.

"Whether the Appellate Tribunal is right in law and on facts in directing the ITO not to deduct the proportionate value of subsidy from the cost of land, building, plant and machinery for the purpose of allowing investment allowance and depreciation?"

2. The matter relates to the assessment year 1984-85 and 1985-86. The assessee had claimed the depreciation as per the statement filed alongwith the return contending that the subsidy received from the State Government should not be deducted while computing the written down value or cost of the assets. The Assessing Officer however reduced the value of subsidy from the cost of the assets for the purpose of calculating investment allowance and depreciation. The first appellate authority directed the ITO not to deduct the said subsidy from the assets for the purpose of computing depreciation and investment allowance. In the appeal before the Tribunal by the Revenue, the Tribunal relying upon the decision of this Court in the case of C.I.T. v. Grace Papers Industries Pvt. Ltd., reported in 183 ITR 591 confirmed the order of the Appellate Commissioner and dismissed the appeal.

3. In Grace Papers Industries Pvt. Ltd. (supra), this Court while considering a similar question has held that the basis adopted for determining the cash subsidy with reference to the cost or value of fixed assets was only a measure for quantifying the subsidy and the subsidy was not given for the specific purpose of meeting any portion of the cost of the fixed assets. Consequently, the subsidy did not form part of the actual cost of plant and machinery within the meaning of section 43 of the Income-tax Act, 1961. It cannot therefore, be deducted from the cost of assets in computing depreciation, development rebate and investment allowance, and the assessee was entitled to the relief under section 80J of the Act without deduction of the cost to the extent of the subsidy. This decision has been approved by the Hon'ble the Supreme Court in the case of C.I.T. v. P.J. Chemicals Ltd., reported in 210 ITR 830 in which the Supreme Court observed that where the government subsidy was intended as an incentive to encourage the entrepreneurs to move to backward areas and establish industries, the specified percentage of the fixed capital cost which is the basis for determining the subsidy, being only a measure adopted under the scheme to quantify the financial aid, is not a payment, directly or indirectly, to meet any portion of the "actual cost". The expression "actual cost" in section 43(1) of the

Income-tax Act, 1961 needs to be interpreted liberally, as held by the Supreme Court. Such subsidy does not partake the incidents which attract the conditions for its deductibility from "actual cost". The amount of subsidy, it was held, is not to be deducted from the "actual cost" under section 43(1) for the purpose of calculation of depreciation.

4. In view of the ratio of the decision of the Supreme Court in the case of P.J. Chemicals Ltd. (supra) affirming the view taken by this Court in the case of Grace Papers Industries Ltd. (supra), we hold that the Tribunal was right in directing the ITO not to deduct the proportionate value of subsidy from the cost of land, building, plant and machinery for the purpose of allowing investment allowance and depreciation. The question referred to us is, therefore, answered in the affirmative against the Revenue and in favour of the assessee. The Reference stands disposed off accordingly with no order as to costs.

[R.K. ABICHANDANI, J.]

[KUNDAN SINGH, J.]

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Amp/-